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Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number Howard J. Weg (State Bar No. 91057) Lisa S. Tahk (State Bar No. 218401) Peitzman, Weg & Kempinsky LLP 1801 Avenue of the Stars, Suite 1225 Los Angeles, CA 90067 Phone: (310) 552-3100; Fax: (310) 552-3101	<div style="text-align: center; font-weight: bold; font-size: 1.2em;">FILED</div> <div style="text-align: center; font-weight: bold; font-size: 1.1em;">2004 SEP 21 PM 3:16</div> <div style="text-align: center; font-size: 0.8em;"> U.S. BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA JON D. CERTICO, CLERK OF COURT </div>
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: APPLAUSE, LLC , a Delaware limited liability company <div style="text-align: right;">Debtor(s).</div>	CASE NO.: SV04-15821 AG

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: October 14, 2004	Time: 2:30 p.m.
Location: United States Bankruptcy Court, 21041 Burbank Blvd., Courtroom 302, Woodland Hills, CA 91367	

Type of Sale: ☒ Public ☐ Private Last date to file objections: September 30, 2004

Description of Property to be Sold: "Applause," "Appaws," and "Everyone Loves to Get Applause" trademarks, tradenames, domain names and variations thereof and certain related inventory. See Exhibit A attached hereto.

Terms and Conditions of Sale: Free and clear of liens, claims, encumbrances, and other interests pursuant to Bankruptcy Code section 363(f); cash only. See Exhibit A.

Proposed Sale Price: \$4 million plus \$250,000 for Inventory Assets

Overbid Procedure (If Any): See exhibit A attached hereto.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address):

Howard J. Weg, Esq.
Peitzman, Weg & Kempinsky LLP
1801 Avenue of the Stars, Suite 1225
Los Angeles, CA 90067
Phone: (310) 552-3100; Fax: (310) 552-3100

Date: September 21, 2004

Howard J. Weg (State Bar No. 91057)
Jonathan D. Gordon (State Bar No. 205541)
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Proposed Attorneys for Applause, LLC

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION**

In re

APPLAUSE, LLC,

Debtor.

Case No.: SV 04-15821-AG

Chapter 11

NOTICE OF:

**(1) HEARING ON DEBTOR'S MOTION FOR
AN ORDER AUTHORIZING AND
APPROVING THE SALE OF THE
"APPLAUSE" TRADEMARK AND
CERTAIN RELATED ASSETS FREE AND
CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES AND OTHER
INTERESTS; AND**

Debtor's Business Address:
23942 Lyons Avenue
Newhall, CA 91321

Federal Tax I.D. No.: 95-4846994

**(2) PROPOSED SALE PROCEDURES FOR
SALE OF "APPLAUSE" TRADEMARK AND
CERTAIN RELATED ASSETS FREE AND
CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES AND OTHER
INTERESTS**

Date: October 14, 2004
Time: 2:30 p.m.
Place: Courtroom 302
21041 Burbank Blvd.
Woodland Hills, CA

**TO THE HONORABLE ARTHUR M. GREENWALD, UNITED STATES BANKRUPTCY
JUDGE, THE UNITED STATES TRUSTEE, AND PARTIES IN INTEREST:**

PLEASE TAKE NOTICE that on October 14, 2004 at 2:30 p.m., or as soon thereafter as the matter can be heard (the "Sale Hearing"), before the Honorable Arthur M. Greenwald, United States Bankruptcy Judge, in Courtroom 302, located at 21041 Burbank Blvd., Woodland Hills, California, the Bankruptcy Court will consider and act upon the Debtor's Motion for an Order Authorizing and

1 Approving the Sale of the "Applause" Trademark and Certain Related Assets Free and Clear of Liens,
2 Claims, Encumbrances and Other Interests (the "Sale Motion"). The Sale Motion and all supporting
3 papers will be filed with the Bankruptcy Court by Applause, LLC, debtor and debtor in possession (the
4 "Debtor"), on or before Friday, September 24, 2004.

5 **PLEASE TAKE FURTHER NOTICE** that, pursuant to the Sale Motion, the Debtor is
6 seeking an order of the Bankruptcy Court authorizing and approving the sale of the "Applause,"
7 "Appaws," and "Everyone Loves to Get Applause" trademarks, tradenames, domain names and
8 variations thereof (the "Acquired Intellectual Property") to Russ Berrie and Company, Inc. ("Buyer"),
9 or the highest bidder, pursuant to an "Amended & Restated Trademark Purchase Agreement" (the "Sale
10 Agreement"). Pursuant to the Sale Agreement, the Buyer shall also purchase certain of the Debtor's
11 related inventory for not more than \$250,000 unless the Debtor and Buyer agree to the sale and
12 purchase of inventory in excess of \$250,000. A copy of the Sale Agreement will be attached as an
13 exhibit to the Sale Motion. The material terms of the Sale Agreement are described below, but in the
14 event of any conflict, the Sale Agreement controls:

15 A. Subject to overbids, Buyer shall pay \$4 million in cash (the "Purchase Price") for
16 the Acquired Intellectual Property at the closing of the sale after all conditions precedent have been
17 satisfied (the "Closing"), which include (i) the entry of a Bankruptcy Court order authorizing and
18 approving the sale that is not stayed pending an appeal at the time of the Closing and (ii) a
19 determination that the Buyer is a good faith purchaser within the meaning of section 363(m) of the
20 Bankruptcy Code. The Buyer is required to make a \$200,000 cash deposit toward the Purchase Price
21 by September 30, 2004. If the Closing occurs after October 18, 2004 and on or before November 1,
22 2004, the Purchase Price for the Acquired Intellectual Property shall decrease to \$3,500,000, and if the
23 Closing occurs after November 1, 2004 and on or before November 15, 2004, the Purchase Price shall
24 decrease to \$2,900,000.

25 B. The Debtor will have period of six months following the Closing to "sell off"
26 inventory that utilizes the Acquired Intellectual Property, subject to specified terms and conditions.

27 C. The Buyer that acquires the Acquired Intellectual Property will also purchase
28 certain of the Debtor's inventory of products that were manufactured under a license to use any of the
following names or marks: "Curious George," "Hush Puppies," "Wolverine," "Scoobie Doo" or
"Raggedy Anne and Andy" (collectively, the "Inventory Assets," and together with the Acquired
Intellectual Property, the "Purchased Assets"). Subject to the final inventory of such products, the
purchase price for the Inventory Assets will not be more than \$250,000 unless the Debtor and Buyer
agree to the sale and purchase of inventory in excess of \$250,000 (the "Inventory Purchase Price").
The Inventory Purchase Price is an amount that Buyer shall pay upon the Closing of the sale of the
Intellectual Property Assets.

D. The sale of the Purchased Assets shall be free and clear of all liens, claims,
encumbrances and other interests of any and every kind whatsoever.

E. The Sale Agreement contains no financing or due diligence contingencies. If the
Buyer does not pay the Total Purchase Price or otherwise defaults under the Sale Agreement, the
Debtor shall be entitled to retain and apply the Buyer's \$200,000 deposit as liquidated damages.

1 PLEASE TAKE FURTHER NOTICE that, on or before September 24, 2004, the Debtor will
2 file with the Bankruptcy Court a motion that requests an order of the Bankruptcy Court authorizing and
3 approving the procedures described below for the sale that is described in this Notice (the "Sale
4 Procedures"). As of the date of this notice, however, the Bankruptcy Court has not approved the Sale
5 Procedures.

6 A. **Qualified Overbids.** The Debtor shall consider qualified overbids for the
7 Acquired Intellectual Property ("Qualified Overbids), but shall not consider proposed overbids that are
8 not Qualified Overbids. In order for a proposed overbid to be deemed a Qualified Overbid, a proposed
9 overbid must meet each of the criteria set forth in the following subparagraphs 1 through 6:

10 1. **Timing.** All of the documents and information required to be submitted
11 pursuant to subparagraphs 2 through 6 below must be received by the Debtor and the Debtor's
12 proposed attorneys, Howard J. Weg of Peitzman, Weg & Kempinsky LLP, no later than 5:00 p.m.,
13 California time, three (3) business days before the Sale Hearing (the "Overbid Deadline"). Unless a bid
14 containing all of the required documents and information is submitted by the Overbid Deadline, it will
15 not constitute a Qualified Overbid.

16 2. **Initial Overbid Amount.** In order to be a Qualified Overbid, the overbid
17 must be not less than cash in the amount of \$4,200,000.

18 3. **Form and Content of Overbid.** In order to be a Qualified Overbid, any
19 overbid must include an executed asset purchase agreement which is in form and substance the same as
20 the Sale Agreement (other than the identity of the Buyer and the amount of the Purchase Price, which
21 must satisfy the conditions of paragraph 2 above), together with a redline of the overbidder's asset
22 purchase agreement showing the differences from the Sale Agreement. Without limiting the foregoing,
23 the overbid may not include any representations, warranties or conditions to closing (including due
24 diligence or financing contingencies) other than those set forth in the Sale Agreement (unless they have
25 been previously waived by Buyer). To be a Qualified Overbid, any overbid must include the
26 purchaser's agreement to purchase the Inventory Assets on the same terms and conditions set forth in
27 the Sale Agreement.

28 4. **Offers Irrevocable.** In order to be a Qualified Overbid, any overbid must
contain a letter from the overbidder stating that the overbid will remain open and irrevocable until an
order by the Court approving the sale of the Acquired Intellectual Property (an "Approval Order") has
been entered by the Clerk of the Court.

5. **Deposits.** In order to be a Qualified Overbid, any overbid must be
accompanied by a deposit in the form of cash, a cashiers' check or wire transfer of immediately
available funds to the Debtor in the amount of \$200,000 (the "Deposit"). The Debtor shall hold all
Deposits in a segregated account, subject to Court order, as liquidated damages arising as a result of the
failure of any winning overbidder to close for any reason other than the default of the Debtor. The
Debtor shall return a Deposit to an overbidder as soon as practicable after the earlier to occur of (i) the
Debtor's delivery of notice to an overbidder that its overbid is not a Qualified Overbid and (ii) entry of
an Approval Order providing for the sale of the Acquired Intellectual Property to an entity other than
the overbidder. Interest that accrues on the successful bidder's Deposit (including Buyer's Deposit if
Buyer is the successful bidder) shall be credited toward the Purchase Price.

6. Ability of Bidder to Consummate Transaction. In order to be a Qualified Overbid, the overbid must include written financial evidence, satisfactory to the Debtor, demonstrating that the overbidder has the ability to consummate the transactions contemplated by the Sale Agreement. Such financial evidence may include, among other things, background reports and/or references, financing commitments, financial statements, income statements, tax returns, balance sheets, annual reports and bank statements.

B. Qualification and Disqualification of Overbids. No later than 5:00 p.m., California time, one (1) business day before the Sale Hearing (the "Determination Deadline"), the Debtor shall determine whether each overbidder has submitted a Qualified Overbid and shall so inform each overbidder whether it submitted a Qualified Overbid. The Bankruptcy Court shall resolve any dispute over the qualification of an overbidder in accordance with the Sale Procedures.

C. Result If No Qualified Overbids. If the Debtor determines by the Determination Deadline that there are no Qualified Overbids, the Debtor shall move the Court at the Sale Hearing for authority to sell the Intellectual Property Assets to Buyer pursuant to the terms of the Sale Agreement.

D. Auction If Qualified Overbids. If the Debtor determines by the Determination Deadline that there are one or more Qualified Overbids, the Debtor shall hold an in-person auction (the "Auction") at the Sale Hearing.

1. Only the entities that submitted Qualified Overbids and Buyer bid at the Auction.

2. The Debtor may continue the Auction to a later date without further notice other than an announcement at the Auction.

3. At the commencement of the Auction, the Debtor shall announce which of the Qualifying Overbids is, in its determination, the highest and best offer. In making this determination, the Debtor shall have the right to consider, among other things: (a) the number, type and nature of any changes to the Sale Agreement submitted by each bidder (provided that such changes meet the standards set forth in A.3. above); (b) the extent to which such changes are likely to delay closing of the sale to such bidder and the cost to the Debtor of such changes or delay; (c) the likelihood of the bidder's ability to close a transaction and the timing thereof, and (d) the net benefit to the Debtor's estate, taking into account Buyer's rights to the Break-Up Fee described herein.

4. At the Auction, further overbids over the initial overbid of \$4,200,000 must be in increments of at least \$50,000.

5. At the conclusion of the Auction, the Debtor shall announce which of the bids is, in its determination, the highest and best offer and that bid will be presented to the Court for approval.

E. Application of Deposit If Qualified Overbidder Fails To Close. If a Qualified Overbidder successfully submits an overbid for the Acquired Intellectual Property (the "Successful Overbid") and thereafter fails to Close, and the failure to Close is a default under the Sale Agreement

1 approved by the Bankruptcy Court, the Debtor may terminate the Sale Agreement and the Debtor shall
2 then be entitled to apply the defaulting bidder's Deposit as liquidated damages.

3 F. **Break-Up Fee.** In the event that Buyer is not the successful bidder for the
4 Acquired Intellectual Property, at the Closing of the sale of the Acquired Intellectual Property to the
5 successful overbidder, Buyer shall be paid from the proceeds of the sale a break-up fee of \$125,000
6 (the "Break-Up Fee").

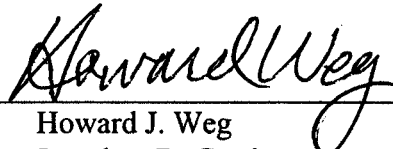
7 **PLEASE TAKE FURTHER NOTICE** that the Sale Motion will be on file with the
8 Bankruptcy Court and available for inspection and copying at the office of the Clerk of the Court,
9 located at 21041 Burbank Blvd., Woodland Hills, CA 91367. In addition, a copy of the Sale Motion
10 may be obtained by delivering a written request to Lisa Tahk, Esq., Peitzman, Weg & Kempinsky LLP,
11 1801 Avenue of the Stars, Ste. 1225, Los Angeles, California 90067 (telecopier: 310-552-3101).

12 **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Bankruptcy Rule 9013-1(a)(7),
13 a formal response to the Sale Motion must be filed with the Bankruptcy Court and served on the
14 attorneys for the Debtor at least fourteen (14) days before the Sale Hearing. Pursuant to Local
15 Bankruptcy Rule 9013-1(a)(11), failure to file and serve timely a response in accordance with the Local
16 Bankruptcy Rules may be deemed by the Bankruptcy Court to be consent to the granting of the relief
17 requested in the Sale Motion.

18 Dated: September 20, 2004

19 PEITZMAN, WEG & KEMPINSKY LLP

20 By: _____

21 
22 Howard J. Weg

23 Jonathan D. Gordon

24 Proposed Attorneys for Applause, LLC, Debtor and
25 Debtor in Possession
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